

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

UPSHER-SMITH LABORATORIES,)
INC., *et al.*,)
)
Plaintiff,)
)
) CASE NO. 0:16-cv-00556
v.)
)
) JUDGE _____
FIFTH THIRD BANK,)
)
)
Defendant.)
)
)
)
)
)

NOTICE OF REMOVAL

Please take notice that, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446(a), Defendant Fifth Third Bank (“Fifth Third”), with a full reservation of its rights, defenses, exceptions, objections and claims, removes this action, which is now pending in the Fourth Judicial District of the County of Hennepin, Civil Action No. 27-CV-16-1982, to the United States District Court for the District of Minnesota. In support of removal, Fifth Third states as follows:

1. Plaintiff Upsher-Smith Laboratories, Inc. (“Upsher-Smith”) commenced an action against Fifth Third by filing a complaint on or about February 12, 2016. That action bears the same title as the above caption and is docketed in the Fourth Judicial District Court for the County of Hennepin as Case No. 27-CV-16-192 (hereinafter, the “State Action”). As required by 28 U.S.C. § 1446(a), a copy of the Summons and Complaint (“Compl.”) is attached hereto as Exhibit A. No other pleadings or papers have been served on Fifth Third.

TIMELY REMOVAL

2. Upsher-Smith served a copy of the Complaint and Summons on Fifth Third on February 16, 2016.
3. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because it is being filed within thirty days after service of the Complaint upon Fifth Third.
4. The State Court Action is not a non-removable action listed in 28 U.S.C. § 1445.

GROUND FOR REMOVAL
Diversity Jurisdiction

5. This action is removable pursuant to 28 U.S.C. § 1441, which authorizes removal of any civil action brought in a state court in which the United States District Court for that district has original jurisdiction. This Court has original jurisdiction based upon diversity under 28 U.S.C. § 1332 and pursuant to 28 U.S.C. § 1441(b), because diversity of citizenship exists between Upsher-Smith and Fifth Third, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Upsher-Smith is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota. (Compl. ¶ 6.)

7. Fifth Third is an Ohio banking corporation with its principal place of business in Cincinnati, Ohio. (Compl. ¶ 7.)

8. The amount in controversy in this action exceeds the sum or value of \$75,000, exclusive of interest and costs. Although it is Fifth Third's position that Upsher-Smith is not entitled to any damages, Upsher-Smith alleges that its damages in this case exceed \$50 million. (Compl. ¶ 5.)

Other Requirements For Removal

9. No other party needs to consent to this removal.
10. Pursuant to 28 U.S.C. § 1446(d), Fifth Third is giving written notice of this Notice of Removal to counsel of record for Plaintiffs and is filing a copy of this Notice of Removal with the clerk of the Fourth Judicial District of the County of Hennepin.
11. This Court is the District Court embracing the place where the State Action is currently pending. Fifth Third reserves the right to challenge venue.
12. This Notice of Removal is being signed pursuant to Fed. R. Civ. P. 11.
13. Fifth Third reserves the right to amend or supplement this Notice of Removal and to submit evidence in support thereof in the event that Upsher-Smith moves to remand.

Dated: March 3, 2016

Respectfully submitted,

/s/ Kevin S. Lampone
Kevin S. Lampone (Minnesota Bar No. 393216)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
Telephone: (614) 464-5474
Facsimile: (614) 719-4743
kslampone@vorys.com

Victor A. Walton, Jr. (pending admission *pro hac vice*)
Eric W. Richardson (pending admission *pro hac vice*)
Nathan L. Colvin (pending admission *pro hac vice*)
Vorys, Sater, Seymour and Pease LLP
301 East Fourth Street
Great American Tower, Suite 3500
Cincinnati, Ohio 45201
Telephone: (513) 723-4000
Facsimile: (513) 852-8447
vawalton@vorys.com
ewrichardson@vorys.com
nlcolvin@vorys.com

Attorneys for Defendant Fifth Third Bank

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 3, 2016, a copy of the foregoing Notice of Removal was served via regular U.S. mail, postage prepaid, to:

Richard T. Ostlund
Randy G. Gullickson
Steven C. Kerbaugh
Anthony Ostlund Baer & Louwagie P.A.
3600 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402

/s/ Kevin S. Lampone
Kevin S. Lampone